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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,359	07/06/2001	Michael John Faulks	14,676.14	7546
23556	7590	04/20/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			GOODMAN, CHARLES	
			ART UNIT	PAPER NUMBER
			3724	16
DATE MAILED: 04/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,359

Applicant(s)

FAULKES ET AL.

Examiner

Charles Goodman

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 29-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4-6.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. The Request for Reconsideration filed on November 20, 2003 has been entered and noted. The arguments are persuasive to the extent that the disputed "orifice" will be construed as Applicant sets forth. (Note to self - review this statement)

Election/Restrictions

2. Applicant's election without traverse of Group I, Species I, in Paper No. 9, claims 1-28 is acknowledged. It is noted that the elected Species does not include Figs. 30-32.
3. Claims 29-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

Information Disclosure Statement

4. It is noted that with respect to the IDS, Paper No. 6, filed on June 11, 2002, there were several references listed without corresponding copies thereof. However, to expedite matters and due to the overly numerous references which have been cited, copies of the following references have been procured by the Examiner:¹

US 4,940,426

US 5,070,171

US 5,149,765

US 5,237,035

US 5,235,017

¹ It appears that these copies were inadvertently overlooked by the Applicant although they seem most pertinent to the composition of the wipes and dispensers. This exemplifies how easily references may be overlooked due to the sheer number being cited.

US 5,260,401

US 5,411,729

EP 1 002 746

EP 0 343 304

EP 0 728 426

WO 98/34781

WO 00/57843

WO 01/17496

WO 01/41613

5. It is also noted that with respect to the IDS, Paper No. 6, filed on June 11, 2002, several copies of references were provided without a corresponding listing in the IDS. Therefore, these references are being cited by the Examiner in the attached PTO Form 892, since they are presumably important enough for copies to be provided by Applicant. Copies thereof will not be provided to Applicant since it is clear from the record that Applicant is already in possession of these references.

These references are Aterianus, Rockefeller, Ames, Burton, Riemersma et al, Dannheim et al, McNeil, Nitsch, Ogg et al, Jones, Schulz, Schulz et al, Hertel et al, and Johnson.

6. It is further noted that while the IDS is much appreciated, the Examiner respectfully requests that Applicant limit the references to those that are most pertinent to the invention disclosed and claimed. With 300+ references to consider, focus on the pertinent issues of patentability is hindered by such considerations. Therefore in the interest of expediting prosecution, it is respectfully requested that Applicant point out the cited references which are most pertinent to invention.

Drawings

7. The drawings are objected to because:
- i. In Fig. 3, reference “27” is not pointing to the pin as described in the specification. Note p. 12, ll. 6-7.
 - ii. The depiction of the tray 3 in Fig. 2 is not clearly understood with respect to the corresponding description in the specification. More specifically, p. 14, ll. 27-29 describe that the tray does not have a back wall. However, Fig. 2 clearly shows otherwise. Which is which? For examination on the merits, either will be treated as being obvious if not anticipated depending on the prior art teachings.
 - iii. In Figs. 12-16, it appears that there are different embodiments of the wiper assembly being shown. Therefore, different reference numerals should be used for each modified feature. MPEP § 608.01(g). Applicant is reminded that such changes in the drawings requires corresponding changes in the specification. On the other hand, if these Figures are showing different views of the same assembly, then the specification should be clear. Substantially the same applies to Figs. 17-29. Similarly, Figs. 36-45 show different embodiments, but they use the same reference numerals for the same but modified feature. All these instances should be otherwise designated, e.g., “340’”, “340””, “340’””, etc.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "17" has been used to designate both side wall of the cartridge (Fig. 2) and a side wall of the tray (Fig. 3). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

9. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "9" (e.g. Fig. 2); "32" (e.g. Fig. 9); "95" (e.g. Fig. 30); "318" and "319" (Figs. 36-38); "334" (Fig. 45). A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

10. The disclosure is objected to because of the following informalities:

- i. P. 21, l. 14, the phrase "wipes 34" is not clearly understood when "34" has been used to designate a "roll" of such wipes. Perhaps the phrase should read -- roll of wipes 34 --. Note p. 16, l. 17. Substantially the same applies to all similar instances in the specification.

- ii. P. 27, l. 29, the term "figures" should be capitalized to distinguish the reference to drawing figures.
- iii. P. 28, ll. 27-28, the reference to Figs. 9-10 with respect to ridges 96 is not clearly understood. Figs. 9-10 of the application do not show this feature.

Appropriate correction is required.

- 11. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

- 12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 13. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 1, the drag percentage is vague and indefinite in that it is not clear how the drag is defined. More specifically, the claim does not set forth any comparison to understand the metes and bounds of the drag relationship. For example, what is the normal drag, how is the drag different from a prior art device? Substantially the same applies to similar claims.

b. Claim 15 is vague and indefinite in that it is not clear what the claim encompasses. If the space is 0 mm, then there is no space in which the wipes may pass. Thus, what is the claim referring to? Substantially the same applies to similar claims.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. As best understood, claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chasid.

Chasid discloses the invention substantially as claimed except that Chasid is silent as to the drag relationship between the sealing orifice (56) and the wet wipes (34). However, since the wipes are wet and the self sealing orifice is not, there inherently exists a reduction in drag between the two versus a dispenser using a dry wipe. To what extent, e.g. at least about 20%, it would appear that this is facilitated by many factors, e.g., the moisture content, the material of the wipes and/or the orifice, or the dimensions of the orifice. In that regard, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Chasid with an orifice dimension, moisture content, and/or the material of either the orifice or the wipes in order to facilitate a desired amount of reduction in moisture to the dispensed wipes, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, *In re Leshin*, 125 USPQ 416, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, *In re Aller*, 105 USPQ 233, and since such a modification would have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claims 5 and 16, the modified device of Chasid discloses the invention substantially as claimed except it is not clear whether the wipes are in a roll form or not. However, rolled or stacked form of the wipes are well known equivalents in the art and the Examiner takes Official Notice to that effect.

Regarding claims 10-15, it appears that the Chasid includes the space as claimed. However, since Chasid lacks a written disclosure thereto, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Chasid with the space as claimed in order to facilitate the desired gap dimension for wiping the wet wipes, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).


Conclusion

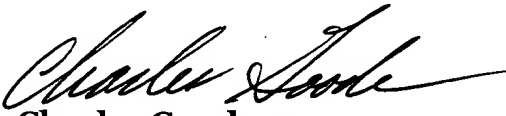
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

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In lieu of mailing, it is encouraged that all formal responses be faxed to (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-1148.

cg 
April 19, 2004


Charles Goodman
Primary Examiner
AU 3724
CHARLES GOODMAN
PRIMARY EXAMINER